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JEREMY M. TEMPEL
Bloomington, Indiana

BAILEY, Judge

Case Summary

Tamyra and Renato d'Ippolito (the "d'Ippolitos") appeal the trial court's judgment of \$6288 in favor of Gene D. Barley, d/b/a Freedom Contracting, Inc. ("Gene"). We affirm.

Issues

The d'Ippolitos raise five issues, which we consolidate and re-state as:

- I. Whether there was sufficient evidence that the parties entered into an oral contract for renovation work;
- II. Whether the trial court clearly erred in making its findings as to Gene's damages; and
- III. Whether there was any evidence to support the judgment against Renato.

Facts and Procedural History

The facts most favorable to the judgment are as follows. Tamyra owned a theater in Linton, Indiana and operated a café in Bloomington, Indiana. Pursuant to a written contract, Tamyra paid Gene to repair the roof of the theater. Also, she paid him to perform renovation work at the café. After a dispute arose regarding payment, the locks on the theater and the café were changed, and Tamyra told Gene that she did not want him on the job anymore.

In November of 2005, Gene sued the d'Ippolitos for unpaid labor and material costs. Renato then left the country in December.¹ The d'Ippolitos answered and Tamyra counterclaimed alleging breach of warranty.

The trial court concluded that the parties entered into contracts for work on the café and the theater and found damages as follows: on Gene's claim, \$1000 for renting a

¹ As of the bench trial in April of 2007, it was unclear when Renato would return.

dumpster, \$250 for removing water from the theater basement, and \$8038 for work performed on the café (\$11,538 - payment of \$3500) for total damages of \$9288; and \$3000 on Tamyra's counterclaim. This resulted in a net judgment of \$6288 in favor of Gene. The d'Ippolitos now appeal.²

Discussion and Decision

I. Contract for Work at the Café

The trial court found and concluded that the parties "entered into a series of verbal agreements for the renovation of the café." Appendix at 6. On appeal, the d'Ippolitos assert that no contract was formed. The existence of a contract is established by evidence of an offer, acceptance, consideration, and a manifestation of mutual assent. Troutwine Estates Dev. Co. v. Comsub Design & Eng'g, Inc., 854 N.E.2d 890, 897 (Ind. Ct. App. 2006), reh'g denied, trans. denied. To enter into an oral contract, the parties must agree to all essential terms of the contract. Wallem v. CLS Indus., Inc., 725 N.E.2d 880, 883 (Ind. Ct. App. 2000).

Whether a set of facts establishes a contract is a question of law. Kelly v. Levandoski, 825 N.E.2d 850, 857 (Ind. Ct. App. 2005), trans. denied. However, determination of the terms of an oral contract is a matter for the trier of fact. Thomas J. Henderson, Inc. v. Leibowitz, 490 N.E.2d 396, 399 (Ind. Ct. App. 1986). Findings are clearly erroneous only if the record contains no facts to support them, whether directly or by inference. Family Video Movie Club, Inc. v. Home Folks, Inc., 827 N.E.2d 582, 585 (Ind. Ct. App. 2005).

² Gene asks this Court to affirm the trial court's judgment in its entirety, notwithstanding the finding of \$3000 in damages awarded on the counterclaim.

Tamyra testified as follows:

Q: And so what did you hire [Gene's] crew to do at the restaurant?

A: I think I've stated that several times this morning um, to put clean walls in the kitchen. Not pores walls, to meet health code.

Q: Is that the only thing that you were hiring them to do?

A: That was the initial only reason, yes.

Q: . . . is that all you hired him to do?

A: That's all I hired him to do in the café. Other things were explored later.

Q: So you hired him to do other things later?

A: I hired him to do the kitchen. My husband was very interested in a bar area.

Q: Uh huh.

A: I was not.

Q: So is it your testimony that your husband hired him to work in the bar area?

A: Well my husband doesn't . . .

Q: Is that yes or no?

A: Oh um, he asked him to do a bar area, yes.

Q: Were you present at the café just about every day that they were working there?

A: Yes.

Q: And so you saw what they were working on?

A: Well . . .

Q: Correct?

A: Yes.

Q: And so if you had hired them to work just in the kitchen and they were off working on something else you would have seen that right and would you have said something to them like hey why are you working there?

A: Yes.

Q: You have made it clear that you have a mistrust of contractors and padding of invoices and all of that stuff but yet we have a signed proposal for work at the theater, we don't have signed work orders for work at the restaurant do we?

A: No we don't.

Q: Why not?

A: Because it was verbal between [Gene] and myself.

Q: And did [Gene] attempted [sic] to get your signature on work orders?

A: No he did not.

Q: . . . So you had a verbal contract with [Gene] to perform work at the restaurant to work in the kitchen and then through your husband's instructions in the bar area, correct?

A: Right.

Transcript at 73-75. In addition to the walls and the bar area, she testified that she authorized Gene to paint and re-paint the second story walls and floor, and to create an arched doorway. She paid Gene \$3500 for his work at the café.

Gene testified that, during the project, members of his crew were at the café and/or the theater every day, until being locked out. As to how the d'Ippolitos would authorize particular projects, he said the following:

A: We moved around when she would say that she wanted this done. I would give her a price on that right then. She either said yes do it or no don't do it. And there wasn't very many things that she had us do or told us to do that she didn't have us do. Uh, and then we would go ahead and do it and I'd write these up and bring them back.

Q: How long after she authorized the work did you prepare those documents?

A: Uh, within two or three days of the work being done. I didn't feel like I wanted to five and dime her to death of getting a check every day. So I held on until we got two or three.

Q: . . . were these work orders that are paid?

A: No sir they weren't.

Q: Did you do the work?

A: Yes.

Q: That's contained on these work orders?

A: Yes.

Id. at 151-52.

Gene testified further that he handed documents entitled "Proposal," "Additional Work Authorization," or "Contractors Invoice" to Renato and that Tamyra was "standing right there" when he did so. Id. at 150, Exhibits 3-13. Neither Renato nor Tamyra signed any of them. Exhibits 7 to 13 evidenced "bar construction," replacing "plaster & lath . . . w/ drywall," repairing the kitchen floor, painting, re-painting, "debris removal," and "tear out & installation" of columns. Ex. 7-13. In particular, Exhibit 7, regarding the bar, contained the note "size & materials changed per customer again." Ex. 7 (emphasis in original). Thus, there was evidence to support the trial court's conclusion that the parties entered a series of

oral agreements for work at the café.

II. Findings of Damages

The d'Ippolitos also argue that the trial court abused its discretion in making its findings as to Gene's damages. Specifically, they contest the award of damages for Gene's rental of a dumpster at the theater, removing water from the theater, and his services at the café. Findings are clearly erroneous only if the record contains no facts to support them, whether directly or by inference. Family Video, 827 N.E.2d at 585.

As noted above, Gene testified that he and his crew performed the work described in Exhibits 7 to 13, all of which pertained to the café project. Also, he stated that Exhibit 14 accurately summarized the charges for the work he performed at the café. Exhibit 14 showed that Gene's total charge for work at the café was \$11,538, the amount ultimately found by the trial court.

As to the theater, Gene testified that it initially appeared in the following condition:

It was musty and moldy in there. They had had so much rain coming in that the plaster had started falling off the ceilings and the building was basically unsafe. It had been sitting in water for I'm not sure exactly how long, I want to say five years uh, and the roof was leaking, it had a big crack going in the middle of the building where the building had separated and that appeared to be where the water was coming in at.

Tr. at 138. Gene tore off the roofing and replaced it, but did not complete the entire roof. For purposes of disposing of the old roofing material, Tamyra authorized Gene to rent a dumpster for \$1000. Id. at 143. She also had Gene pump water from the theater's basement. After he did so, the high water mark revealed that he had removed seven feet of water from the basement. Receipts showed the costs to be \$1000 for the dumpster rental and \$250 for

the water removal. Based upon this evidence, the trial court did not clearly err in making its findings as to Gene's damages.

III. Whether Renato Is Liable for the Judgment

Finally, the d'Ippolitos argue that there was no evidence to support a judgment against Renato. To the contrary, Gene testified that he handed written proposals, including the price, to Renato.

Q: You've identified exhibits "3" through "13" as invoices or proposals for work uh, at either the restaurant or the theater. Did you ever hand these proposals to Mr. or Mrs. d'Ippolito?

A: Yes I did.

Q: They did not sign them did they?

A: No.

Tamyra:³ Can he be specific, objection, as to he handed those to, myself or my husband?

A: It was her husband but you were standing right there.

Id. at 150. Exhibits 3 to 6 concerned the theater, while Exhibits 7 to 13 concerned the café.

Gene continued:

Q: What happened when you handed the work orders or invoices to Mr. or Mrs. d'Ippolito?

A: Uh, they stood there and looked at them, discussed them, and then [Renato] um, got upset and threw those invoices back at me and stomped off and Tamyra stomped off to catch him and I picked my papers up and never got them signed.

Q: What happened next?

³ While represented by counsel on appeal, Tamyra was pro se at trial.

A: Uh, they left.

Q: The d'Ippolitos left?

A: Yes.

Q: Was there any work that your crew performed that was not authorized by Mr. or Mrs. d'Ippolito?

A: No sir.

Q: Everything was authorized?

A: Yes.

Q: And was there any portion of the work about which the price for the work had not been agreed upon?

A: No.

Id. at 152. Meanwhile, Tamyra acknowledged Renato's involvement at the café. There was evidence to support the trial court's entry of judgment against Renato.

Conclusion

The trial court did not err in finding and concluding that the parties entered into oral contracts for work at the café. The trial court did not abuse its discretion in making its findings as to Gene's damages. Finally, there was evidence to support the entry of judgment against Renato.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.